

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
Civil Action No. 83-2864(SA)

ANTONIO CIPOLLONE, individually,
and as Executor of the Estate
of Rose D. Cipollone,

Plaintiff,

-vs-

LIGGETT GROUP, INC., a
Delaware Corporation; PHILIP
MORRIS, INCORPORATED, a
Virginia Corporation; and
LOEW'S THEATRES, INC., a
New York Corporation,

Defendants.

:
:
: TRANSCRIPT OF
: PROCEEDINGS
:

: Newark, New Jersey

: May 18, 1983
: AFTERNOON SESSION

B E F O R E:

HONORABLE H. LEE SAROKIN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

BUDD, LARNER, GROSS, PICILLO, ROSENBAUM,
GREENBERG & SADE, ESQS.,
BY: MARC Z. EDELL, ESQ. & CYNTHIA WALTERS, ESQ.
-and-
WILENTZ, GOLDMAN & SPITZER, ESQS.,
BY: ALAN M. DARNELL, ESQ.,
Attorneys for the Plaintiff.

ARNOLD & PORTER, ESQS.,
BY: PETER K. BLEAKLEY, ESQ.,
BY: THOMAS E. SILFEN, ESQ.

Attorneys for the Defendant, Philip Morris.

Pursuant to Section 753 Title 23 United States Code,
the following transcript is certified to be an accurate
record as taken stenographically in the above-entitled
proceedings.

PHYLLIS T. LEWIS, C.S.R.
Official Court Reporter - United States District Court
P.O. Box 25588, Newark, New Jersey 07101

PHYLLIS T. LEWIS, CSR, OFFICIAL COURT REPORTER, NEWARK, NJ

1
2 A P P E A R A N C E S: (Continued)

3 GREENBAUM, ROWE, SMITH, RAVIN, DAVIS &
4 BERGSTEIN, ESQS.,

BY: ALAN S. NAAR, ESQ.,

-and-

5 WEBSTER & SHEFFIELD, ESQS.,

BY: DONALD J. COHN, ESQ.,

6 JAMES KEARNEY, ESQ.,

FRANCIS DECKER, ESQ.,

7 Attorneys for Defendant, Liggett.

8 BROWN & CONNERY, ESQS.,

BY: RAYMOND F. DROZDOWSKI, ESQ.,

9 Attorneys for Defendant

Philip Morris.

10 STRYKER, TAMS & DILL, ESQS.,

11 BY: WILLIAM S. TUCKER, JR., ESQ.,

-and-

12 SHOOK, HARDY & BACON, ESQS.,

BY: STEVEN PARRISH, ESQ.,

13 ROBERT E. NORTHRIP, ESQ.,

PATRICK M. SIRRIDGE, ESQ.

14 Attorneys for Defendants,

Philip Morris and Lorillard.

1 A In assisting to make my diagnosis.

2 MR. KEARNEY: That concludes our readings from the
3 deposition of Dr. Carluccio.

4 I would like to move into evidence what has been
5 marked as DJT-4027, a health questionnaire in the records of
6 Dr. Carluccio, and contained in the jury binder at page 4.

7 MS. WALTERS: This was in our jury binder we used
8 with one of the early witnesses.

9 Mr. Sirridge had objections earlier and I think we
10 ought to reserve and hold them all until the end.

11 MR. KEARNEY: There is an objection if you used
12 it --

13 MS. WALTERS: Mr. Sirridge objected to some that I
14 had in the binders. I think we ought to decide it later.

15 THE COURT: Well, I will reserve on it and we will
16 discuss it.

17 MR. KEARNEY: Judge, we will now move to the
18 deposition of Dr. Nellie Lee. Brief readings, hopefully.

19 Reading from the deposition of Dr. Nellie Lee,
20 taken by counsel for one of the defendants on December 11,
21 1986, page 6.

22
23 N E L L I E L E E, M. D., sworn.

24 MR. KEARNEY: Beginning page 11, line 13.

25 Q Doctor, you are a medical doctor?

1 A Yes.

2 Q Do you have a specialty?

3 A I am an internist and a cardiologist.

4 Q Are you Board certified or non-Board certified, either
5 one of those?

6 A Board certified for both.

7 Q How long have you have been practicing these
8 specialties, Doctor?

9 A Since 1975.

10 Q When was the first time you saw Mrs. Cipollone for any
11 medical treatment?

12 A On January 19, 1980.

13 Q What history did you receive from her?

14 A Her main complaints that first visit was more of
15 gastrointestinal, she was complaining of epigastric pain,
16 hypertension, vomiting and bad taste in her mouth.

17 Q Epigastric, what is that pain?

18 A Epigastric is stomach pain.

19 MR. KEARNEY: 16, line 25.

20 Q Now, continuing on, did you take any further personal
21 history?

22 A Yeah. That she smoked one pack of cigarettes per day.

23 Q She gave you that information?

24 A Right.

25 MR. KEARNEY: Page 20, line 13.

1 Q Now, did you send her anywhere or did you do anything
2 else about her problem with her abdomen.

3 After the first visit?

4 After the first visit?

5 A Well, the next note I have of February 13, I noted that
6 the patient was admitted for work-up at Holy Name Hospital,
7 so I must have admitted her for tests.

8 MR. KEARNEY: 21, line eight.

9 Q Does irritable bowel syndrome sound right as one of the
10 things you were looking at?

11 Were you looking for or the hospital found?

12 A No. I admitted her to rule out those conditions that I
13 mentioned, and the final diagnosis that we came up with was
14 irritable bowel syndrome.

15 Q What does that mean?

16 A Some people call it nervous colitis. It is a condition
17 where they have a lot of complaints in the bowels, like what
18 she had, but by x-rays and tests we don't find anything
19 organic to explain the symptoms.

20 MR. KEARNEY: 24, line 15.

21 Q What was your opinion with regard to the irritable bowel
22 syndrome and the bad car accident she described to you in
23 the history? What was the relationship, if any?

24 A Well, I feel it is related, that from the way she
25 described it that this precipitated the diarrhea and that

1 this sort of started all the problems that she had.

2 MR. KEARNEY: 25, line ten.

3 Q Doctor, you told us that irritable bowel syndrome
4 normally arises in people who are nervous, anxious,
5 irritable. Is that correct?

6 A Correct.

7 Q Is that what you found with her?

8 A Right.

9 Q Did you find that she was nervous, anxious and
10 irritable?

11 A I found her anxious, yes.

12 Q Did you find that anxiousness, anxiety, that nervousness
13 as a result of that auto accident?

14 A Say that again.

15 Q Was the nervousness, anxiousness the result of the auto
16 accident that she told you about?

17 A From the history I would say yes.

18 MR. KEARNEY: Page 31, line 20.

19 Q Now, on the side there you have something about phobia.
20 Did she tell you, or why did you write something about
21 phobia?

22 A Well, we must have discussed about it, that she still
23 had phobia about riding cars.

24 Q Did she use the term "phobia" or is that something that
25 you put down as a result of listening to what she said?

1 A I don't know.

2 Q What does phobia mean?

3 A Phobia means fear.

4 Q On July 25, 1980 she still had a fear about driving
5 cars?

6 A Yes, about riding cars.

7 Q Was that something that continued from the time she
8 first told you about it up and through July of 1980?

9 A I would say yes, because I said persists.

10 Q Underneath that it looks like aching all over. Is that
11 correct?

12 A Yes.

13 Q And beneath that is depressed?

14 A Right.

15 Q What did she tell you that made you write down
16 depressed?

17 A I don't remember what she told me. That is my clinical
18 impression.

19 Q She was depressed?

20 A Yes.

21 Q What you did you in the way of medication or further
22 treatments?

23 A Of course I took the urine test again and checked it,
24 get the culture to check for urine infection. Told her to
25 continue the blood pressure pill. I suggested at that time

1 to see a psychiatrist.

2 Q Was that because of her phobia and the depression and
3 the problems, nervous problems she had been having?

4 A Right.

5 Q Did you tell her the name of a psychiatrist?

6 A I don't know whether I did or not.

7 Q She went eventually to see a Dr. Carluccio. Is he
8 somebody you work with?

9 A Yes.

10 MR. KEARNEY: 40, line 10.

11 Q The next visit, is that January 10, 1931?

12 A Right.

13 Q What were her complaints and symptoms at that time?

14 A Now, I think her main complaints and symptoms at that
15 time that we talked about was her phobia again and that she
16 finally went to see a psychiatrist, but she complained that
17 the medications were too strong and not helping her and that
18 it made her worse.

19 MR. KEARNEY: Page 42, line 15.

20 Q Would I be correct that probably she was still
21 continuing on with this nervousness, irritability, this
22 depression?

23 A Right.

24 Q Let me ask you, Doctor, at some point in time in the
25 treatment of this woman were you ever told by Mrs. Cipollone

1 or tell anybody else that Mrs. Cipollone was irritable?

2 A I don't remember.

3 Did you see it anywhere in the chart.

4 Q For example, I show you what has been marked as D-Lee-2
5 for identification, your report dated April 9, 1980.

6 This is your report?

7 A Right.

8 MR. KEARNEY: At this time I would like to
9 introduce into evidence what we have marked DJT-4030, and
10 what appears in the binder under the tab Dr. Lee, at page
11 number one.

12 MS. WALTERS: No objection.

13 THE COURT: In evidence.

14 (Exhibit DJT-4030 is marked in evidence.)

15 MR. KEARNEY: Continuing the reading.

16 Q Did you tell her, and I read -- tell him in the report
17 that Mrs. Cipollone, who was once a very outgoing, jolly
18 person had became very nervous, irritable and unhappy due to
19 the confinement to her house from her fear of motor
20 vehicles?

21 A Okay, so it is there.

22 Q I just want to say, she continued to have irritability
23 then.

24 A All right.

25 MR. KEARNEY: 47, line 25.

1 Q You then saw her again on February 17, is that correct?

2 A Right.

3 Q What were her symptoms and complaints?

4 A Her condition as I said was the same.

5 Q So everything she had before had continued?

6 A Right. Diarrhea still on and off.

7 MR. KEARNEY: Turn to Page 56, please, line 14.

8 Q So she had continued from the time she saw you until
9 March of '81 to have this nervous, irritable and depression
10 problem, right?

11 A Yes.

12 MR. KEARNEY: I would like to offer into evidence
13 now what we have marked as DJT-4031 and appears at page 2 of
14 the binder and DJT-4032, appearing at page 3 of the binder,
15 letters from Dr. Nellie Lee pertaining to Mrs. Cipollone.

16 MS. WALTERS: We do have an objection to those?

17 THE COURT: Can you have wait, Mr. Kearney?

18 MR. KEARNEY: That concludes my reading of Dr. Lee
19 and Dr. Carluccio's depositions.

20
21 We will deal with this later.

22 THE COURT: If that is all right with you?

23 MR. KEARNEY: That is fine.

24 Your Honor, I would like to turn again to the
25 deposition of Rose Cipollone and ask Mr. Northrip's